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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/535,186

03/27/2000

George McBride

CARDIOBEAT-1

3794

7590

10/28/2003

Donald J. Lenkszus PC

P O Box 3064

Carefree, AZ 85377

EXAMINER

KIM, PAUL L

ART UNIT

PAPER NUMBER

2857

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/535,186

Applicant(s)

MCBRIDE ET AL.

Examiner

Paul L Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 4, 8, 9, and 18-20 rejected under 35 U.S.C. 102(e) as being anticipated by Quy.

With reference to claims 1 and 4, Quy teaches a medical testing method comprising the steps of: providing and coupling a test sensor to a subject (fig. 2, part 24 & col. 7, lines 17-30), coupling the test sensors to an apparatus having access to an Internet (fig. 3 & col. 7, lines 41-45), operating the apparatus to automatically obtain test measurement data from the test sensors (col. 7, lines 17-30), uploading the test measurement data via the Internet to a location remote

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from the subject (fig. 1, parts 40 & 50 and col. 38, lines 25-30), providing a server at a remote location (fig. 3, part 22), processing the measurement data at the central server to produce processed data (col. 8, lines 9-15), downloading the processed data from the server to the apparatus (fig. 5, step 128 & col. 3, lines 35-40), and displaying the information (fig. 2, part 40 & col. 9, line 35).

With reference to claims 8 and 9, Quy teaches storing the processed data in a database (fig. 4, part 74 & col. 8, lines 15-23).

With reference to claims 18-20, Quy teaches providing multimedia means at the apparatus, using the interface to communicate test instructions to the subject (fig. 2, part 40), and receiving the test instruction information via Internet (col. 9, lines 10-15).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-7 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quy in view of Kumar et al.

With reference to claims 5-7, Quy does not specify a second apparatus being used to interact with the server. Kumar et al teaches receiving a request at the server from a second apparatus and transmitting and receiving the processed

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data (fig. 5a & col. 14, lines 35-37). In addition it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 (7<sup>th</sup> Cir. 1977). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Quy, so that a second apparatus is used, as taught by Kumar et al, so as to derive the added benefit of reduced costs per user.

With reference to claims 10-16, Quy teaches automatically storing processed data obtained from the subject but does not specify collecting data at different times or providing an analysis program to analyze historical measurement data. Kumar et al teaches automatically storing processed data at different times for historical analysis purposes to provide a second processed data (col. 13, lines 46-51 & col. 14, lines 19-23) and using a second apparatus to transmit and receive additional processed data (fig. 5a). Since Quy and Kumar et al are both within the art of remote patient monitoring by a network and because analyzing historical data is well known in the art, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Quy, so that historical analysis is applied to collected data, as taught by Kumar et al, so as to derive the obvious benefit of trend analysis of recorded data.

6. Claim 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quy in view of Zadrozny et al.

Quy does not specify the processed data being encrypted. Zadrozny et al teaches a remote medical data collection system in which patient data is

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encrypted and decrypted (col. 7, lines 4-11). Since Quy and Zadrozny et al are both within the art of remote patient monitoring by a network and because encrypting and decrypting data is well known in the art, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Quy, so that patient data is encrypted, as taught by Zadrozny et al, so as to derive the obvious benefit of increased data security.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1 and 4-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kerr and Albert et al both teach a remote host/client patient monitoring system.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 703-305-7468. The examiner can normally be reached on Monday-Thursday 10:00-6:30.

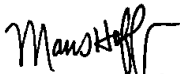
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization where this application or proceeding is

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assigned are 703-746-4440 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK  
October 20, 2003

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800